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THE
CASE
OF
The ERECTORS
OF A
Chapel, or Oratory;
In the Parish of
St. Andrew's, Holborn.
AND
A DEFENSE of their
PROCEEDINGS therein.
With a farther Consideration of the
CASE of CHAPELS in General,
As Annexed, or Unannexed to
Parochical CHURCHES.

L O N D O N:

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THE
CASE
OF
The ERECTORS, &c.

THE Inhabitants of the Parish of *St. Andrew's, Holborn*, by it's great Accession of Buildings, being become so numerous, that the Parochial Church is not capable of receiving more than one 8th Part of them ; some well-disposed Persons agreed together to supply in Part this Defect, by erecting a Chapel or Oratory, in which Divine Service should be perform'd, according to the Liturgy of the Church of *England*.

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THAT they might proceed by legal and regular Steps in this Design, they had laid before them the Opinion of a late eminent Civilian, in a like Case of St. George's Chapel; and moreover, advised very early with a common Lawyer of great Learning and Reputation, whose Judgement upon the Case, hath since been confirmed by another of equal Character; and from their concurrent Opinions they apprehended, that the Diocesan had sufficient Authority to allow of such Erection, and to License Clergymen duly ordain'd, to officiate therein. Whereupon they apply'd themselves to the Lord Bishop of *London*, whose full Approbation they receiv'd under his own Hand; and, under this Encouragement, proceeded chearfully in their intended Work. And tho' they did not conceive the Assent of the Rector of the Parish necessary to them, yet, that no civil Respect might be wanting towards him, they acquainted him with their Intention, as early as they could find Access to him, not doubting his Concurrence and Assistance in the Promotion of it; but, much contrary to their Expectation, he declared himself in Opposition to it, as an Invasion of his Rights, and came himself in Person to forbid the Workmen to proceed in the Building.

UPON

UPON this, the Gentlemen concern'd, reapply'd to the Bishop, desiring his License for Persons, by them nominated, to Officiate in the Chapel when finish'd, and assuring him of their Resolution to try the Validity of such License in Law. The good Bishop out of his pious Desire of Peace, advised them to try all amicable Methods with the Rector, who, he presumed, could not finally persist in his Opposition. Whereupon they made Overtures to the Rector, the Sum of which was; That (saving to him, and his Successors, all Tithes, Offerings, or Perquisites whatsoever, arising to him, or them, from the Rectory, in the most ample Terms,) if they were quietly permitted to nominate for the first Time, they were content, that all future Nominations should belong to him and his Successors. But this Overture being rejected with great Disdain; and the Bishop in the mean time prevail'd on to withhold the License desired of him; they were advised, as the shortest, and the best Expedient, to offer their Case by Petition to Parliament. Accordingly a Petition was brought into the House of Lords, by the Right Honourable the Earl of *Nottingham*, praying Leave to bring in a Bill, enabling them to proceed and nominate, and the Bishop to License their Nominees for the Supply of the Chapel

pel when finish'd, under the same Securities and Concessions they had offer'd to the Rector; which Petition the Committee, to whom it was referr'd, was pleas'd to reject.

HOWEVER the Lord Bishop of *London* has since been graciously pleas'd to license a Person, nominated by the Proprietors, for the Supply of the Chapel, when finish'd.

THIS is the plain State of the Case; and these are the Steps they have taken in the Advancement of this useful Design. In every one of which I hope to vindicate them from those Calumnies and Aspersions, which have been thrown upon them; to shew, that they have acted prudently and justly, without Injury to any one: And that the Concessions, which merely for peace sake they made to the Rector, were such as he had no Right to demand; nor must ever again expect.

IN the First Step they took of Applying to the Bishop, as having by Law a sufficient Power to authorize their Proceeding, they acted under the Opinions of as eminent Lawyers in their several Professions, as this Age has produced. And if in the Event they should prove mistaken, an Error into which they were led by such Authorities, will be surely allowed excusable.

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IN their Application to the Rector, they intended him a Mark of their Civility and Respect: As to the Rights he claims to himself in this Affair, they presume he has none: But least any Umbrage should be taken of Prejudice, which might arise to him from this Work, they thought it became them to assure him, that the Supply of this Chapel was not intended to be any Burden to him or his Successors; and that the Methods by which it would be supported, were such, as could not diminish any Dues or Profits of the Rectory, which they offer'd to save whole and inviolable to him, under any Securities that should be desired.

THEIR next Step was offering their Petition to Parliament, for Leave, to bring in a Bill, by which all future Dispute in this Case might be prevented.

Few Erections of this Kind had been made since the Reformation, compared with the *many* which had been made before it: And therefore tho' Chapels or Oratories, independent on the Parochial Churches, were well known before that Time; and the Laws under which they were built and supply'd commonly understood; yet the long Disuse of such Erections, and the Want of late Precedents, render'd the Case in a Manner New, and therefore somewhat obscure. Lawyers were

were divided in their Opinions upon it, and the Bishop left doubtfull, whether he might legally grant his License under the Terms desired. To clear these Difficulties, to satisfy the Bishop's Scruples, and to obtain that License from him, under the Protection of a new Law, which he has since, upon more Deliberation, been pleased to grant without it, was the sole Intention of the Bill petitioned for. It is therefore a Mistake, to imagine this Case is prejudg'd by the Lords. That it cannot be prejudg'd as a Question of Right, is evident, because it never came Judicially before them: And, for ought that appears, the Reason of their dismissing the Petition, might be, because they thought every thing requested in it, sufficiently establish'd by Laws already in Being. The Petitioners submit with all Duty to the Wisdom of the Committee; but, consider'd as a Case of Equity, in which View it was offer'd to the Legislature, no Reasons appear'd to them *in Foresight*, from which they could apprehend an unfavourable Reception.

FOR they had been well inform'd, that in former Ages of the Church, when Places of publick Worship were wanting, this very Indulgence by them desired, (the Nomination of the Clerks) was
given

given by several Imperial Laws *, to all Persons who should at their own Expence erect and support such Chapels or Oratories ; and the Bishops, in whose Dioceses they were built, were requir'd to license or ordain the Persons so nominated, unless they were Canonically disqualified. That such Oratories or Places of Worship were here wanting, they look'd upon as apparent and acknowledg'd : And that some Encouragement was due to any who, by their own voluntary Expence, would supply this Want, they presumed no one, who had any Concern for Religion, would deny. And if, in better Times, when the Zeal of Christians ran higher than now, and wanted less Persuasion to Works of this Nature, the Nomination of the Clerks was thought the most proper Encouragement, and granted in much larger Terms, than these Gentlemen insisted on ; not only

* *Si quis Oratorii Domum fabricaverit, & voluerit in ea Clericos Ordinari (προβállειν) aut Ipse, aut Heredes ejus, si expensas ipsis Clericis ministrant & dignos denominant, Denominatos Ordinari; si vero qui ab iis eliguntur tanquam indignos prohibent sacra Regula, tunc sanctissimus Episcopus, quos putaverit meliores, ordinandos procuret. Justinian. Novell. 123. c. 18. Item Novell. 67. Item 131. Tit. Si quis Oratorium, &c.*

to the Erectors themselves, but to their *Heirs* after them; they could not but hope a Parliament, as well disposed to promote Religion as any of the old Emperours, would comply with their Petition, and confirm to them that Privilege for *once*, which the like Works had, in former Ages, been thought to deserve in *Perpetuity*.

SUPPOSING the Rector to have the Right he pretends to, this Right the Bishop indisputably had in those earlier Times; and if the Civil Powers *then* thought it equitable to interpose and limit the Bishop's Right, for the Encouragement of such Places of publick Worship, it might be presumed, that the Civil Powers would be induced by the same Consideration to limit the Rector's Power *now*.

THESE Gentlemen conceiv'd, that whatever Rights any Parochial Minister stands possess'd of, were derived to him at first from the Concession of the Bishop, to whom the whole Care of the Diocese originally belong'd, and are now confirm'd to him in Property by the Laws of the Land; and are consequently subject to such Restraints, as the Legislature shall at any Time find it reasonable to add to them; and that the Intention of assigning and confirming to him these Rights, was to render the Parochial Constitution effectual to the good Ends propos'd in it. The Ends of
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the Parochial Constitution they apprehended to be,— That a full Provision might be made for all Persons, to assemble together for publick Worship and Instruction, and have a ready Recourse for all spiritual Offices to one of the Clergy, specially appointed and oblig'd to minister to them; and accordingly that a Precinct was assign'd to each Parish, containing such a Number of Inhabitants, as might assemble in one Church, and be under the Care and Inspection of one Minister. But when the Inhabitants of such a Precinct are multiplied to Treble or Quadruple their first Number: When it is become impossible for them to meet in the Parochial Church; or for the Minister to officiate to them in Prayers or Preaching; and the greater Part of them are left utterly destitute of these Offices; 'tis plain, that the End of the Parochial Constitution is not answer'd; that some farther Provision is wanting. And when Persons in such unhappy Circumstances offer'd at their own Charge to build and support an Oratory, they hoped, the Wisdom of the Legislature would not suffer any supposed Rights or Powers of the Rector, to be extended to the Suppression of so excellent a Work, and to defeat the very Ends, for which they were given him; but that in such a Case it might appear equitable to them, to restore the Bishop,

shop, to Part of his Original Power, and enable him to fill up so manifest a Gap in the Parochial Constitution, by protecting and encouraging an ancient and proper Supply to it.

THE Question which these Gentlemen offered to the Lords, in their Petition, was not, whether the Rector had such Rights as he claimed; This was a Point of Law, which must have come before that Honourable House, as a Court of Judicature, by Appeal from the inferior Courts: But they addressed them as Legislators; and what they humbly offered to their Consideration was, whether, admitting for the present, the Rector to have such Rights, it was not reasonable in their Case, for publick Wisdom to restrain and limit him in the Exercise of them. And they were the less apprehensive, that a bare Plea of Right would have much weight with the Legislature in this Case, because in the late celebrated Act for the new Churches it was not allow'd any. By that Act this pretended Right of the Rector to nominate to all Places of publick Worship within the Bounds of his Parish, is not only superseded *prima vice*, but for ever. Now if it were an Act of Injustice to limit and restrain this Right for *Once*, it was certainly more unjust to take it intirely away: And since the supplying some Thou-
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lands of Persons destitute of the Means of publick Worship and Instruction, was thought Reason sufficient for intirely taking away such supposed Right by the Act for the New Churches ; These Gentlemen hoped, it might not appear unequitable to supersede it for *Once*, in Encouragement of a Work, directed to the same good End, and, without any publick Burden, providing for it. And since in the former Case, the Consideration, that the additional Churches were to be built at the publick Expense, was esteem'd a Reason sufficient for transferring this Right of Nomination (if any such there were) from the Rector to the Crown, at least *Primà vice* ; the Petitioners hoped the same Consideration might be allow'd an equitable Plea, for having this Right assign'd to them for the first Time also.

IN their Address to Parliament therefore, these Gentlemen presume, they will not appear to have acted unreasonably. The Encouragement they desired, was the same in kind, but much less in measure, than had by former Usage been allotted to Works of this Nature. They were prepared to content themselves with the Nomination only for the first time ; and as for the Rector's Pretensions to this Right, supposing them well founded, (which they never meant to allow) yet they might reasonably

nably hope, that the Parliament would be induced, to suspend it for once, by the same Reason which prevail'd on them wholly to take it away in the Act for the New Churches, without making the least Reserve for it, or taking the least notice of it: Neither could they apprehend, that a pretended Right perfectly unconsider'd in that Act, should in their Case be argued for as sacred and inviolable, and that the Suspension of it, tho' but for once, should appear unjust and unequitable, and such an Invasion of Property, as even the Promotion of the same good End propos'd in that Act, could not compensate.

In Sum; in the populous Parishes about the City, there is an evident, confess'd Want of Places of Worship. This Want the Legislature has wisely and piously endeavour'd to remove; but the Provision thus made, is not likely to take its desired Effect in many Years. In the mean Time, some private Persons are willing, for the Supply of this Defect, to erect and support a Chapel, without Burden to the Parochial Minister, or any Diminution to his Revenue. Is no Encouragement due to a Work so inoffensive, so apparently useful, so very much wanted? None that I hear of, has been offer'd; and indeed, if any were intended, less could not be devised, than what these Gentlemen insisted on; and he
who

who thinks this too much for them, may be presumed an Enemy to the Work it self; to be against all farther Provisions for publick Worship; and, if he durst own it, as much dissatisfied with the Act for the New Churches, as he is with this Supply. For every Objection that has been, or I believe can be, offer'd against the one, might have been urged with equal or greater Force against the other.

SUCH Objections as I have met with, so far as they respect the Equity of this Case, I will distinctly consider. And,

First, It is objected, that the Rector has a Right by the Laws of the Land, and the Constitutions of this Church, to nominate to all publick Chapels or Oratories in his Parish, which are within the Rule of the Establishment; and therefore for these Gentlemen or any other Person to claim, or pretend to nominate to, this, is such an Invasion of his Right, as he ought not in Reason or Justice to suffer.

THE Question of Right I shall consider by its self, and hope to prove, that the Pretensions of the Rector in this Case, are without Foundation on any Law, Civil or Ecclesiastical; but at present I consider only the Equity of the Case. I have already observ'd that, supposing the Rector to have the Right he claims, yet (in a late celebrated Instance) it was submitted

ted to the Limitations of Parliament, and that Realons of Equity were not wanting, which might be presumed of Weight enough, to prevail for a Restraint of it in the present Case. And methinks the Rector himself, a Person of such distinguish'd Zeal for the establish'd Worship, might have been prevail'd on, by so much Intercession as has been used to him, to depart even from the most acknowledg'd Right for *once*, in Encouragement of a Work so highly conducive to the Good of his Flock, and the Honour of our Religion. But

Secondly, It hath been objected, that the whole Scheme and Fabrick of Parochial Discipline will be demolish'd, if any Persons, who may happen to be seiz'd with the Itch of building, or otherwise ill affected to the Minister of their Parish, shall be permitted to erect in his District a Place of Worship, and thereby draw off his People from the Attendance due to his Ministrations.

BUT all this Danger is merely imaginary, whilst the Bishop of the Diocese (to whom originally the Cure belong'd) is left the Judge of the *Necessity* or *Expediency*, which may be pleaded for any such Erections. Nor is it indeed very probable, that where such a *Necessity* or *Expediency* is not *notorious*, any Man, or Number of Men, should

should run into the needless Expense and Hazard of such Undertakings. If there appears any thing factious, any thing whimsical, perverse, or peevish in them, the Bishop (it is agreed) may crush them; who besides the Superiority of his Office, and of the Trust, with Regard to this very Case, always reposed in him, may generally be consider'd as less byass'd by any selfish Views, than the Parochial Minister; who, in the very Instance before us, seems much and deeply concern'd for Profits and Emoluments never meant to be injur'd, and who under the Panic of that Apprehension, cries aloud of Danger to the Church and her Discipline; forgetting all the while, that the Discipline of our Church is *Episcopal*; that the Authority he disputes, is *Episcopal*; that he claims in this Case, to be independent on it; that he is setting up for Rights unknown to any *Episcopal Church*, and inconsistent with it's Government, never yet (as I verily believe) contested by any *Presbyter* with his *Bishop*, since the Foundations of Christianity.

WHAT Damage he is likely to suffer in the Article of *Gain*, shall be farther consider'd in my Answer to the next Objection.

MEANWHILE let him here, in passing, be reminded, that, of *many*, who, thro' Mistake or Prejudice, may believe his *Claim of Right* to be *strictly legal*, there is scarce *one*,
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who thinks him either *prudent* or *equitable* in his *Manner* of exercising that *Right*, which they are willing, however, to allow him, either from Inclination, or Prepossession; but I may venture to say, from no accurate Regard to the true Merits of the Cause in Question. Now *Points of Equity* and *Prudence* are of *general Cognisance*; and *many* People may justly pretend to some Degree of Understanding in them; whilst *Points of Law* are in their Nature limited to the *Cognisance* of those *few* only, who shall particularly apply themselves to the Study of them.

Thirdly, It has been suggested farther, that this Chapel will greatly prejudice him by the Diminution of his Revenue. To which I answer,

1. If any Part of his Legal Revenue be incroach'd on, he has a Remedy at Law against the Invader: And as for any honorary Presents, these cannot be suppos'd great, from Persons who have no Opportunity of attending his Ministry; but whatever they are; for what Reason can it be imagin'd, that Persons, who now either go to foreign Churches, or to none at all, should be inclined to give Less, by going to this Chapel? On the contrary, if the Rector had given the Encouragement requested

quested of him, he would doubtless have found the most liberal Returns from their Gratitude, But

2. IN the Overtures made to the Rector, and in the Bill intended to be offer'd to Parliament, the most effectual Provisions were made, for securing to him, and his Successors, all Profits, Perquisites, &c. And if any better had been propos'd, they would readily have been received. The Persons officiating in this Chapel, would have been strictly obliged, not to baptize, or do any other Parochial Office, from which Perquisites have usually arisen to the Rector or his Curates. And a Clause was prepar'd, and ready to be offer'd; by which every Person, taking a Pew in this Chapel, should have been obliged to pay, as an *Easter-Offering*, the greatest Sum he had paid to the Rector in any of the three Years before; so that upon the whole, his Objection will amount to thus much. "Here is a good
 " and useful Work in hand, from which I
 " can receive no Injury; but unless I can
 " strike out some Advantage to my self,
 " or Friends, from it; unless I can main-
 " tain a Curate or two by it, and squeeze
 " out from it an Accession of 100 l. or
 " 200 l. per Year to my Rectory, I will
 " do all in my Power to suppress
 " it." It is evident, that what the Rector

here contends for, is not a Compensation for any thing taken from him, but an Advantage to himself, from the Expense and Labour of other Men. Again,

3. IF the Revenue of the Rector will be diminish'd by this Chapel, it will equally suffer, whether he, or the Proprietors nominate; and consequently, allowing him the Nomination, his Difficulty will not be removed. But this Objection I shall elsewhere have Occasion again to consider. Yet farther, and,

Fourthly, IT has been suggested, that the Want of Churches will as effectually be supply'd, and this Chapel as well served by the Rector's Nomination, as by that of the Proprietors.

VERY likely it might be so; but the great Question is, whether Men will be perswaded to be at the Expense and Trouble of making such Provisions for themselves, upon these Terms. Blessed be GOD, a good Spirit has of late appeared among the Members of this Church, to promote Works of this Nature. But if (as I observ'd) in better Times it was thought reasonable and necessary, to encourage Men to such Works, by giving them the Nomination of the Clerks; can it be imagin'd
less

less necessary now? Places of Worship are as much wanted *now*, in the great Parishes, as they were in any Part of the Empire *then*. And I think it as great an Honour to our Religion, that Men have been found among us, willing to supply this Want, upon less Encouragement than was then given; as 'tis a Disgrace, that there are some among us, who would allow them none at all. But,

Fifthly, PERHAPS it may be said, that the Persons engaged in these Undertakings act usually upon Views, which will be sufficient Encouragements to them, tho' the Nomination of Clerks should be refused them: That they propose to themselves Profit, and raising Estates out of the Revenue of these Chapels; and therefore there is no Fear of their desisting, tho' this Encouragement should be denied them.

WHAT may have been done in other Instances, I know not; but in this, the Gentlemen concern'd, have by the most express Provisions in their own Contract of Settlement restrain'd themselves, and in their intended Bill, offer'd to be restrain'd by Law, from applying one Farthing, that may arise from the Revenue of this Chapel to their own private Use, more than reimbursing to themselves the first Costs. And if the annual Income shall exceed the Ex-
pense

pense of the Service, they offer'd to be accountable for the Remainder, before the Ordinary, and apply it to such Work of Piety or Charity, as he should direct, or approve.

THIS Undertaking has had the Misfortune, to give Umbrage to the Patron, and be oppos'd by him as injurious to his Interests; but in what View it could appear so, I cannot well conceive. If by the Erection of this Chapel the Rectory would be render'd less worth than it is at present; if any Profits would be taken from it; 'tis confess'd, the Patronage would be hurt by it: But if the Rectory be effectually secur'd from any Diminution, the Patron will, in all future Presentations, give just as much as he did before; so that his Interest can no otherwise suffer, than as the Rector's is affected. If the Rector be not injured, the Patron cannot be; and every Objection rais'd in this Case by the Patrons of our overgrown Parishes, is a great deal stronger against the Act, which is intended to subdivide such Parishes, and to split each of them into 4 or 5. The Persons designed to officiate in this Chapel, pretend to no part of the Cure, which can bring in *Profit* to the Rector; they disclaim it in the fullest and amplest manner; they only offer to assist him in the *Burden* of it.

MEANWHILE, if the Persons concern'd in this Undertaking had in due Time applyed themselves to the present Patron of *St. Andrew's*, considering the Nobility of his Birth, and the known Generosity of his Temper, they are very sensible, they should have performed a Part much more becoming them, than any Appearances of Neglect towards one of his high Rank and Quality. They heartily lament an Omission, which they would gladly retrieve by any future Observances, and which was truly owing to no other Cause, but to want of Concert among themselves, in the Summer-Season, when most of them were scatter'd up and down in the Country; and indeed to Want of Experience in Affairs of this Nature, which Men seldom undertake above once in their Lives; and therefore may humbly hope for a candid Construction, if some Forms and Circumstances (very fit and proper in themselves, when timely thought on) should happen to have been omitted by them.

BUT to proceed: The Rectory of *St. Andrew's* will in Fact be so far from Diminution, that it must unavoidably receive an Improvement from this Chapel. An Accession of Inhabitants, all or most of them of the establish'd Church, which the Convenience of this Chapel will doubtless occasion, must be attended with an Increase
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of Offerings, and all Perquisites for Burials, Christnings, &c. to the Rector. And in the Concessions which these Gentlemen were prevail'd on, for peace-sake to make, they offer'd all future Nominations to the Patron and Rector, as they should agree the Matter between them; an apparently great and valuable Advantage, offer'd without a Farthing's Expence to either! But nothing less would give Content to the Rector, than an intire Submission of the whole, without the Liberty of putting in so much as a Pew-keeper.

THESE Gentlemen are far from envying the worthy Rector of St. *Andrew's* any Part of his Revenue; they wish it may be increas'd to him fourfold: But when he reflects, how great a Part of this Revenue he receives from Persons, to whom it is impossible for him to officiate in those Duties, in Consideration of which it was assigned to him by Law; Persons, who are in Effect, as Sheep without a Shepherd, excluded by their Number from the common Fold, and the Care and Direction of the Pastor, and obliged to wander about from Place to Place, seeking their Meat where they can find it; when these Persons offer to supply, at their own Trouble and Expence, this unavoidable Defect in his Care, without Addition to his Burden, or Diminution to his Profits; methinks he
should

should hear with Joy, and to the utmost of his Power encourage such a Proposal, tho' he should gain nothing else by it, but the Satisfaction of seeing so many Souls, for whom he is accountable to Christ, provided with those spiritual Advantages, which he cannot at present supply to them: Nay, if some small part of the great Improvements the Rectory has received from the late Increase of Inhabitants, were to be given up for the Promotion of so christian an End, it might reasonably be hoped, that both Patron and Rector would, without Difficulty, be induced to consent to it.

By the Act for the New Churches the Rectory or Vicaridge of every Parish, where such Church is built, suffers a real Diminution in all future Successions; and the Patronage, for the first Turn at least, is taken away: But did the Wisdom of Parliament allow any Weight to this Objection, in Competition with the good End which was then in view?

AND so by the Act of Toleration, Dissenters of all kinds are at Liberty, to erect a Meeting-House in what Parish they please. From these no more than the bare legal Dues can be expected: And as there are many Sects of them, who partake in none of our Offices; who marry not at all, and are not so much as buried with us; by an Accession of such Inhabitants the custo-

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mary Perquisites arising from these Offices must be very much abated, the Living reduced, and consequently the Patronage render'd less valuable than it was before. And yet I never heard, that any one Patron in either House of Parliament declared against that Act, as invasive of his Property; or if he did, 'tis plain the Legislature had no Regard to his Suggestion.

SUPPOSE then the Rectory might suffer some small Abatement of its present Revenue, by the Erection of this Chapel; yet, we see, in the Judgment of public Wisdom, the good End here proposed ought to over-rule the Objection: Nay, the Consideration of gratifying even Dissenters with Opportunities of publick Worship, has been thought an Overballance to it. How comes it then to appear so formidable in the present Case, which has the very same End in View, as was proposed in the New Churches, and I hope a much better than the Act of Toleration?

BUT how little Regard will be due to this Objection, when 'tis found to be nothing but mere Amusement; and that the Rector must necessarily be a Gainer, and cannot possibly loose any thing by this Chapel?

THE Truth is, this Point is but collateral to the real Dispute in the Case depending, which concerns only the *Nomination*: For if the Rectory will suffer any thing

thing from this Chapel, it will (as I observ'd) be an equal Sufferer, whether the Rector or the Proprietors nominate to it. But it has been suggested, as a Plea in Equity, that the Rector ought to have the Nomination to this Chapel, as an Equivalent for the Prejudice it will do him in his Revenue. Now supposing the Allegation true, yet if the Argument, arising from it, be of any Weight, it ought to have given him, or at least his Successors, the Patronage of all New Churches, and the Nomination to all Meeting-Houses, which are or may be erected in his Parish: And when 'tis allow'd conclusive in these Instances, it will with much better Grace be offer'd in the Case of this Chapel; but if the Allegation be false and without any real Foundation, we can conclude nothing from it, but the Insincerity of those who amuse People with it.

I have hitherto discussed this Question as a Case of Equity; and I conceive it pretty evident, from what has been offer'd, that, admitting the Rector to have a Legal Claim to the Right he insists on, yet the Gentlemen concern'd, were neither unreasonable nor presumptuous in the Hopes entertain'd by them, that the Right in Dispute would either be voluntarily resign'd to them, so far as they desired it, or else be superseded by publick Authority;

ty ; that the Encouragement they requested, would appear in its Nature proper, and such as ancient Usage had allotted in much larger Terms, to Works of this kind; that if, upon the whole, the good End they propos'd were allow'd to deserve any Encouragement ; the Nomination, so limited as they were contented to receive it, would not, in a View of Equity, be refused them. And they trust, it will be consider'd as an Argument of the good Temper and Disposition with which they engag'd in this Design, that they were willing to proceed in it, upon the very lowest measure of Encouragement, which could well be devised.

BUT after all, if in the Result of this Question it shall be found, that the Rector has no manner of Right or Title to the Interest he claims to himself in this Affair, by any Law Civil or Ecclesiastical, they hope the great Condescensions they have shewn, will be remember'd to their Advantage, and the great Opposition and Discouragement they have met with, appear very unreasonable, and little becoming the Persons it has proceeded from.

THE Reader here, and all a-long, will, I hope, remember that I have not been offering at any Reasons, why the Legislature should now interpose with its Authority in the Case before him: *That is quite*

quite out of our present Question, and hath long since been submitted with all becoming Chearfulness to its proper Judges. I am only now considering the general Reasonableness and Equity of these Undertakings, as they stand upon their own Bottom of Law and Justice, unassisted by the present Legislature, whose Help is no longer aim'd at, and which I shall endeavour to prove unnecessary, by making it appear, that the Laws in Being, when executed by a Grant of the Diocesan's License, are sufficient for our Purpose. And if that License had been sooner granted, the Parliament would never have been troubled with any Applications for a supplemental Aid to it. The Right Honourable the Lords of the late Committee, might probably enough have this in their View, as a Reason, why the Bill petition'd for should be rejected, as superfluous. If this should have been so, which I pretend not to *affirm*, but only to *conjecture* at an humble Distance; then every thing which shall here be offer'd from Authorities of Law, may be consider'd as a Vindication of their Proceedings upon the Case before us; altho' indeed what passes *within* those venerable Walls, ought not to be supposed in need of an Apology, as it should never be exposed to the Reproaches or Reflections of any Persons *without* them.

THE



THE learned Rector of *St. Andrew's* needs not to be inform'd, that the Right here in Dispute, was originally Episcopal. To the Bishop primitively belong'd the Cure and Revenue of the whole Diocese: But when the Number of Christians was multiplied, the Parochial Constitution was chosen, as the most apposite and regular Provision for their Supply, with all Religious Offices. And to encourage the Builders and Endowers of Churches, the Bishop gave to Founders of them the Nomination of the Curate, and to the Curate the Ecclesiastical Revenue, arising out of that Precinct; reserving his Jurisdiction over such Church, and the Approbation of the Persons to be nominated to it. And these Grants of the Bishop to the Founders and their Nominees, were confirm'd to them in Property by Civil and Ecclesiastical Laws. This, 'tis well known, was the Original of private Patronages, and the distinctive Rights of the Parochial Clergy.

The Original Right of the Bishop was then so far parted with, and by particular Laws and Canons devolved in such a Measure on the Parish-Curate, as appear'd

pear'd requisite to give Effect to the Parochial Constitution: But the general Care* of the whole Diocese still belong'd to the Bishop; and his original Rights and Authority must still remain with him in all Cases, in which it was not by such Laws and Canons specially limited; and consequently when the Parochial Provision proved defective, and insufficient to the Ends design'd by it, the Bishop might, in Virtue of his original Authority, make any farther Supplement to it, from which he was not by any particular Constitution restrain'd. Accordingly, when the Number of Inhabitants was much increas'd in any Precinct, or Hamlets were built in Parts far remote from the Parish-Church, several additional Provisions were made under the Episcopal Authority, in Supplement to the Parochial Constitution, and distinguish'd from Churches by the Names of *Oratoria*, *Templa Oratoria*, *Domus* or *Ædes Oratoriæ*, and afterwards of *Capellæ*; a Name of later date than the former, but signifying† the same thing. This Name, which

* *Diæcesani habent curam in solidum per totam Diæcesim. Lindw. lib. 4. Tit. 3. C. Humana Concup. v. Diæcesanorum.*

† *Capella potest dici idem quod Oratorium. Lyndw. lib. 3. Tit. 23. C. Quam fit. v. Capellis.*

Oratorium Solemne (sive publicum) Idem quod Capella Rem. de Gonn. Tit. de Immunit. Eccl.

which at length generally prevail'd, was used in a very large Sense ; and comprehended not only distinct Edifices set apart for divine Worship, but often small Inclosures in Cathedral or Parochial Churches; and 'tis sometimes apply'd even to Chantry-Altars erected in a Church. Of those which were distinct Edifices, which is the Case in view, some were consecrated, others not*; some were endow'd with a settled Revenue, others not ; some had Cure of Souls, others not. But the Difference I am principally concern'd to observe,

* The Distinction between Places of Worship consecrated and unconsecrated, is frequent with the Canonists. e. g.

Proprie sumitur Basilica, quæ nondum fuit consecrata; Ecclesia vocatur post Consecrationem. Joh. de Athon. in Constit. Otho. C. Basilicarum v. Basilicarum. Oratorium non sacrum. Id. Ibid. v. Necessitatis causa. Aliud est violare Ecclesiam, aliud Basilicam non consecratam; licet talis Basilica, imo & Oratorium, cum per Episcopum ad sacra fuerit deputatum.—— Etiam immunitatem tribuat. Joh. de Ath. in Constitut. Othobon. c. ad Tutelam. v. Ecclesiam.

This is full Evidence, that Places unconsecrated were apply'd to Religious Uses, by the Episcopal Authority; and enjoy'd certain Privileges and Immunities from a Regard to such Application of them.

is that some were *annex'd* † and united to Parochial Churches as Members of them, and a Part of the Rector's or Vicar's Cure; others were of a distinct Foundation, and *unannex'd* * to them, having Chaplains with proper Rights of their own, and not substitutes of the Parish-Priest. To the Erection of any Chapel of the former kind, there was great Reason that the Consent of the Parish-Priest should be necessary. The *Annexion* made it a part of his Cure; an *additional Burden* was to be laid on him: And as he was accountable to the Bishop for the Supply of it, the whole Care and Direction of the Service ought in justice to be committed to him. But in the Case of *Oratories* or *unannexed Chapels* he was wholly unconcern'd: As he was not charg'd with the Supply of them, so he had no Pretence to claim any Interest in them, or Advantage from them. Examples of both these kinds of Provision for publick Wor-

† *Lyndw. lib. 4. Tit. de Clandest. Despon. C. Humana. V. Capellis.*

* *Aliquando Capella habet Curatum Proprium, alium a Curato superioris Ecclesiæ; aliquando Prælati superioris Ecclesiæ est Curatus utriusque; exercet tamen Curam per Vicarium. Lyndw. lib. 3. tit. 22. C. Quamvis. v. Una Ecclesia.*

ship were frequent in all Parts of Christendom ; but the Conclusion I am concern'd for, will not require me to look farther than our own particular Church and Constitution.

It is acknowledg'd, that we anciently had, and have now among us, many Provisions of the former kind, (i. e.) Chapels *appendent* and *annexed* to Parish Churches, which are now usually stiled *Chapels of Ease* * to the Rectory or Vicaridge of—— (i. e.) They were design'd for the *Ease* of the *People*; but with respect to the Parochial *Curate* they are properly Chapels of *Burden*, and were generally endow'd with some Glebe or Stipend, in Consideration of his additional Duty, and sufficient to gratify a Person officiating under him. And, if I mistake not, these were sometimes call'd *Capellæ Parochiales* †, *Capellæ curatæ*, *Capellæ curam animarum habentes*.

* This Name might as fitly be given to all Chapels built for the Convenience of People living at a Distance from the Parish Church, whether annex'd to the Cure of it or not ; but in common Use we generally understand by it Chapels *annex'd*.

† This Title was given to some Chapels *unannex'd* in regard to certain Privileges indulged them,

bentes. These were wholly and in all respects subject to the Parochial Church; were esteem'd a Part, Member, and Appendage of it; and accordingly were rated together with it for first Fruits and Tenths, both in the ancient and later *Valor Beneficiorum*; and the Canons requir'd, that but one single Procuration† should be taken by the Bishop or Arch-Deacon, for such Church having Chapels annexed.

BUT if it can be proved, that, besides these Chapels of Ease *annex'd*, Places of publick Worship distinct from, and *unannex'd* to, Parochial Churches, are both an Ancient and Present Part of our Constitution; that the Parochial Ministers Consent

them, as having *Baptisterium* and *Sepulturam*, a Capacity of receiving Tithes, &c. which are call'd *Jura Parochialia*. But it is also apply'd to Chapels *annex'd* to, and Members of, Parochial Churches. So *Panorm. Conf. Par. 2. Conf. 106. Capella Parochialis quæ erat de Mensa Plebani, &c.* And in the Constitutions of A. B. Sudbury 1381. *Capella Parochialis* is used as equivalent for *Capella habens curam animarum*. And in the Constitution of A. B. Islip, 1362, to which this of Sudbury refers, the Chaplains of these Chapels are said to be in *Curati servitio*, Substitutes of the Parish Curate.

† *Const. A. B. Stratford, An. 1342.*

was not necessary to the Erection of them; that he never pretended, *de jure communi*, to nominate to them, or to any Interest in them, or Power over them, any farther than they were submitted to him by Composition; I then shall think, the Gentlemen, I am concerned for, fully vindicated, and the Pretensions of the Rector of St. Andrew's fully refuted.

As to the Assertion of Fact, that we had antiently among us a Variety of such Places of Worship, under the Names of *Oratories*, *Free-Chapels*, *Chantries*, &c.* no one can be ignorant, who is at all acquainted with the State of this Church before the Reformation. Our Histories inform us, how vast a Multitude of them was then suppress'd;

* These *Chantries* were sometimes founded upon some Altar in a Cathedral or Parochial Church, when in the *latter*, the Chaplains serving them, were, in many things, subject to the Parish Priest; as to assist him at Mass, when required, &c. But several of them were founded in distinct Edifices; and were then properly *Oratories* endow'd, and differ'd from other *Oratories* or *Chapels* only, in this, that in part of the daily Service special Prayers were to be said for the Souls of the Founder, and such of his Family as were dead, and for the Welfare of the living Branches of it. They obtain'd the Name of *Chantries* merely from the singing of the Prayers.

and that we have still a considerable Number remaining, I shall have farther Occasion to observe. They were under the common Regulations of the * Canon Law, unless in such Cases wherein they were privileg'd by particular Constitutions. Some Dependence they are said to have had on the Parish-Churches within whose Precincts they stood.— The Persons frequenting them were, upon some of the *Festa majora*, oblig'd to communicate with the Parochial Church, and bring their Oblations to it, to pay all accusom'd Dues to the Minister of it, to contribute to the Support of its Fabrick, &c. But that they were independent in the Points which alone affect the present Question, I proceed to shew in the following Particulars.

First, The Consent of the Parish Priest was not, by any Law or Canon, Civil or Ecclesiastical, necessary to their Erection.

THE Consent of the Bishop† was generally required by the Canon Law, to

* *De Capellis minoribus (i. e. non Parochialibus) nihil novi duximus statuendum, definitionibus Canoniciis relinquentes. Const. Otho. c. Basilicarum.*

† *Conc. Cab. 1. Anselmi Const. An. 1102. Can. 15. Alberic. Legant. Const. An. 1138. Can. 12.*

the Erection of any publick Oratory or Chapel, and particularly by Constitutions of this Church; and to such Erection his Authority was sufficient*, without the Concurrence of the Parish Priest. In some Cases indeed he was directed to forbid the building of them; as when the Undertakers† were not presumed of Abilities to finish them; or when they would prejudice the Parish-Church in its Parochial || Rights, viz. Tithes Offerings, Perquisites of Baptism, Burials, or Marriages; but otherwise he was to suffer them to be built, and might freely license them. But to some Erections of this kind even the Bishop's Consent

* *Joh. de Athon. in Const. Othob. C. de Obla. Capell. v. Episcopus concesserit, Gl.—Quod potest facere etiam invito rectore matricis Ecclesiæ.*

Oratorium construi potest de licentia Diocesani—Sine Rectoris Parochialis consensu. Trac. Jur. Univ. T. 13. p. 89.

† *Oratorias Domos non incipiat nisi qui potest perficere; qui hoc visus fuerit agere, prohibeatur a loci Episcopo; si vero sumptus sufficientes ad perficiendum habuerit, ad exitum perducantur Concil. Nicen. II. Act. 8. Can. 16.*

|| *Si non præjudicatur Ecclesiæ Parochiali in Juribus Parochialibus, potest Episcopus libere concedere Licentiam. Trac. Jur. un. ubi supra.*

was not strictly necessary. "As when the
 "Oratory* was built only for Prayers,
 "and not for the Celebration of the
 "Eucharist, and was not endow'd with a
 "settled Revenue". But I presume few
 publick Oratories or Chapels in this Nation
 came within these Exceptions; because
 they were, for the greater part, endow'd,
 and had generally a Clause in their Foun-
 dation, requiring Mass to be said for the
 Souls of their Founders, &c. at least once
 in the Year; by which Circumstances they
 were subjected to the Bishop's License:
 And if the Persons officiating in them,
 preached, that also requir'd a particular

* *Oratorium potest quilibet in sua proprietate adifi-
 care, non solum in domo, sed extra; dum in ea
 non celebretur sine consensu Episcopi. Remig. de
 Gonn. de Immunit. Eccl.*

*Quod non est edificatum ad Missam dicen-
 dam, nec dotatum, tale Oratorium potest quis æ-
 dificare sine consensu Episcopi; tamen sine licen-
 tia Episcopi non potest ibi celebrari. Et hujus-
 modi Oratoria quando construuntur ex necessi-
 tate, quando ibi non sit Ecclesia vicina, tunc
 debet permittere Episcopus ut ibi celebretur.
 Lyndw. lib. 3. Tit. de celebr. Miss. cap. Quam
 sit.*

*Item lib. 3. Tit. 20. cap. Quoniam. v. Loci
 ordinario.*

Licence.

License. And when any Oratory was built with the Bishop's License †, it was then qualify'd for publick Mass.

BUT by the Laws of the Land the Kings of this Realm had a Power of erecting themselves, and licensing others to erect, *Free Chapels*, without the Concurrence of the Bishop. And in those of Royal Erection, Mass might be celebrated without his License; neither were they subject to his Visitation *. And in favour
of

† *Quando Oratorium fuit constructum auctoritate Episcopi, tunc publice potest ibi celebrari. Pauorm. sup. 3tio Decr. Tit. de Censibus. c. Auctoritate.*

* As appears by an Attachment against the Bishop of *Exon*, to answer to the King for exercising Jurisdiction on his Chapel of *St. Burian* in *Cornwal*. Regist. of Writs. Fo. 40. 41.

I presume the King, (i. e.) Commissioners appointed by him, when they visited such Chapels examin'd the Behaviour of the Clerks according to the Statutes of the Foundation. But if they were guilty of any Crimes against the common Canons of the Church, they were doubtless subject to the Authority and Correction of the Ordinary. And in a Case in our Law-Books concerning the Chapel of *Bedd'* in which it was doubted whether the Collation belong'd to the King or the Major &c. of *Bedd'*; it is occasionally affirm'd
that

of these Privileges an Exception is made from the ordinary Canonical Rules, in the Constitutions of A. B. *Strafford* *. But I am persuaded, no Law of the Land or Canon of the Church can be produc'd, by which the Consent of the Parish-Priest is made necessary to the Erection of any Oratory or Chapel, unless it were to be annex'd to his Cure, or some part of his legal Revenue were to be alienated for the Support of it. Nay in a Parish in the Diocese of *York*, where a considerable Part of the Inhabitants lived so remote from the Parish-Church, that they could not well attend divine Service; Pope *Alex. III.* † directs the Diocesan, to take away from the old Church the Tithes, &c. of that remote Precinct, and annex them to a new Church to be built in it, whether the Rector consented or not. This I confess was an extraordinary Case, and not agreeable to the common Rule; and I produce it only to shew, that the most acknowledg'd Paro-

that the Ordinary had Power to deprive the Person collated, if he saw good Reason. *lib. Assis. An. 13. Ed. 3.*

* Cap. *Quam sit.*

† Extrav. Tit. de ædificand. Eccl. c. ad Audientiam.

chial Rights were sometimes submitted to the Episcopal Power, when the good of the People, and supplying them with Opportunities of publick Worship, appear'd to require it; and I suppose, an uncommon Obstinacy in the Parish-Priest might have occasion'd that Decree.

In the Case of Chapels, the Bishops were ordinarily directed to take Care, that the Tithes, Profits, and Obventions of the Parochial Church should not be diminish'd by them; and in some Cases to require an *Oath** from the Persons nominated to them, not to prejudice the Parochial Priest in his Revenue, nor raise or abett any Quarrels between him and his Parishioners. Which, by the way, is a good Argument, that he had not a negative either on their Erection, or on the Nomination to them: for if he had; he might have made his own Terms, and secured himself.

I doubt not, but several Instances may be produc'd, of publick Oratories or Chapels erected with the Consent of the Parish-Priest; some I have met with my self, which might happen, either from his

* Const. of A. B. *Winchelsey*, an. 1305. But this I think is plainly restrain'd to Chapels erected within the Edifice of the Parochial Church.

Zeal and good Inclination, to promote the ipiritual Advantage of his Flock : And this might induce him, to assist them with his Interest in the Bishop, to procure his License; or else the Bishop, who had confessedly a negative, might sometimes, and when he apprehended any Prejudice to the Revenue of the Parish Church from such Chapel, insist on his Consent; and, to prevent all future Complaint from him, insert it in the License for the Erection. This is the utmost that can be infer'd from such Instances. But what I insist on, is, that no Law Civil or Ecclesiastical confined the Bishop not to license without such Consent of the Parochial Incumbent ; and consequently he had Authority to license without it : And it were easy to instance in a vastly greater Number of such Oratories or Chapels licensed by the Bishop or Ordinary *, without the least Mention of any Consent of the Parochial Minister. Neither,

* Some Instances occur of Chapels erected in Parishes appropriated to some Abbey, without other Licence than from the Abbot. But in these Cases the Abbot had an exempt Jurisdiction, and consequently he acted as Ordinary, and his Licence was properly Episcopal.

Secondly, Is there the least Footstep of any Right (*de Jure communi*) of the Parochial Priest to nominate, collate, or present to such Chapels or Oratories when erected.

By the Canon Law the Founder*, Builder, and Endower of any Church, was the Patron of it; according to the old Canonical Verse,

Patronum faciunt Dos, Ædificatio, Fundus.

And this Rule was receiv'd by our Common Law Judges, as may be seen in a Suit of the Provost of *Kings Coll. Camb.* against J. S. concerning an Advowson appendent to the mannor of *Coleshal.* 13. H. 8. 1. This Rule extended to all Ecclesiastical Erections of what kind soever, to Abbeys†, Priories, Chapels||, Oratories,

* Patronus dicitur, qui construxit Ecclesiam, seu dotavit, vel fundavit, eam ad esse deducens; & dicitur Patronus, ad instar Patris, qui Filium suum producit ad esse. Panorm. sup. rubr. de Jure Patron. Item Conf. P. II. Con. 59.

† Corp. Jur. Can. Tom. 3. Caus. 18. Q. 2.

|| Capella non nascuntur, sed necessario requirunt Con-

ries, &c. In the former indeed, by a Decretal of Gregory IXth,* the Patrons are excluded from the Election of their Prelates; but in Chapels he there expressly asserts the Right of the Patrons, to nominate and present to them. And in the Arguments of the Canonists upon the Case, all Canons ascertaining the Patronage of Churches, are without Distinction constantly applied to Chapels †. And where Provisions are made for their Supply with proper Persons, the Directions are given *ad Dominos prædiorum* ||, as the Patrons of them. And the 13th of Ed. I. which ascertains the Rights of Patrons of Churches, is by an express Clause extended to Patrons of Chapels, as on the same Foot

Constructorem : Ergo prima fronte præsumuntur habere Patronum. Panorm. Conf. Par. I. Conf. 54.

* *Patroni assensus non habeatur in eligendis Prælati in Conventuali Ecclesia; secus tamen est in Capella, in qua unus Presbyter a Patrono eligitur, & Episcopo præsentatur. Decret. Greg. IX. lib. 2. Tit. 38.*

† Panorm. Concil. Par. II. Conf. 59. Item Conf. P. I. Con. 54.

|| Concil. Aur. IV. C. 7.

with

with them. To a *Legal Right of Patronage* it was requisite, that the *Erection, Endowment, and Foundation*, should be made with the Approbation of the *Bishop**, who had Authority to assign it upon any one of these three Titles. So we read of a Right of Patronage acquired only by *building* †, or *rebuilding* ‖; and if *three Persons* concur'd in the Erection, so that one gave the *Ground*, another *built*, another *endow'd*, the Patronage might be assign'd to all Three §. But without one

* *Jus Patronatus est Jus alicui competens in Ecclesia, pro eo, quod de Diocesani licentia sive consensu illam fundavit, dotavit, vel construxit. Joh. And. sup. Rubric. de Jure Patron.*

† *Jus Patronatus quod acquiritur, sola constructione. Panorm. Sup. 3. Decr. Tit. de Jure Patron. C. Quacunque.*

‖ *Sicut Patronus fit Ecclesiam vel Capellam de novo edificando, ita etiam fit, si ab alio edificatam, & disruptam, reedificat. Panorm. Thes. v. Patronus.*

§ *Possunt Tres effici Patroni ejusdem Beneficii, si unus construat, alius fundet, alius dotet. Panorm. Conf. Par. II. Conf. 106.*

of these Titles the Bishop * could not assign it to any one.

WE are told indeed by the Canonists, that a Church acquires the Patronage of any such Erection within its Parish, if it gives the Ground† upon which it is built, or assigns any of its Profits to the Endowment of it. But this Title is manifestly derived to it as the *Founder*, or *Endower*, and not merely as the *Parish Church*; and upon this Ground it is that any Chapel, &c built in fundo Ecclesie Parochialis ||, is said to be dependent on it, and

* —Non construxerunt, nec Fundaverunt, nec Dotaverunt; ergo Jus Patronatus illis non potuit per Episcopum concedi. Panorm. ibid.

† Si obtulit Obventiones, aut Fundum. Id.

|| Una Ecclesia fundata in Fundo Ecclesie Parochialis, Dependere dicitur a Prima, & Vicarium poterit ibi constituere, & superior Prælatus erit Prælatus utriusque; quod valde notandum est pro istis Capellis & Altaribus quæ ædificantur in Ecclesiis. Panorm. sup. 21mi Decr. Tit. de at. & Qualit. cap. Eam Te.

What he means by in Ecclesiis, is thus explain'd: Ecclesie appellatione comprehenditur Cæmeterium, & Capella sibi contigua; secus in existentibus extra septa Ecclesie. Panorm. Thes. v. Ecclesia.

under its Patronage. But on the contrary, if such Chapel, &c. * was not built upon the Church-Ground, and the Church contributed nothing to its Erection, it is clearly determin'd, that it has no Pretence to the Patronage, merely because 'tis built within the Limits of its Parish; nay † tho' the Church did contribute something to the *Endowment*, yet if another *founded* and *built* it, he was the Patron of it, and the Church had Right only to a Turn in Presentation with him: But if it

* *Si Ecclesia antiqua nil de suo contulit, nullo jure probatur quod efficiatur Patrona — Patronatus acquiritur Constructione, Fundatione, aut Donatione, sed ex Aedificatione intra limites Parochiae duntaxat, Ecclesia antiqua non ponit Fundum, quia non habet Proprietatem loci, neque Dotem, neque sumptus ad Constructionem, ergo non acquirit Patronatum. Panorm. sup. 3. Dec. Tit. de adif. Eccl. c. ad audientiam.*

† *Si (Capella) aedificatur extra Ecclesiam, in Parochia tamen alicujus Ecclesiae, aut Ecclesia Parochialis contribuit in Dote, & habet Praesentationem una cum Patrono; aut nihil tribuit, & tum non potest praeferre praesentationem, sed praesentatio pertinet ad solum Patronum. Joh. de sel. de Beneficiis. P. 2. Q. 22. Tra. Jur. Univ. T. 15.*

Contributed nothing, it had no Pretense at all to the Presentation.

It were easy to multiply Authorities to this purpose; but those I have produced, are I think sufficient. I beg leave only to observe, that the Canon Law was received in this Nation, and that Chapels, as well as other Ecclesiastical Benefices, were regulated by it, unless in Cases of particular Exemption, as appears throughout *Lyndwood*, wherever he mentions them: Who must be presumed to write with a particular View to this Church, where he comments upon Constitutions made in it; and our Lawyers well know, that all Canons not repugnant to the Laws of the Realm, are still in force, and the Execution of them is required by two unrepeal'd Statutes.*

ACCORDING to the general Direction of the Canon Law, the Right of nominating, presenting, or collating to Chapels was, in this Nation as well as others, in the *Founders*, their *Heirs*, &c. † or such Persons as they, by the Chartularies

G

ries

* 27. H. 8. cap. 15. Item 35. H. 8. cap. 16.

† *Patronus qui Jus vindicat presentandi ad Beneficium Ecclesiasticum ex Fundatione, Dotatione, vel Constructione sua vel Prædecessorum suorum.*
Joh. de Athon. in Const. O. h. ob, C. Quia plerumque. v. Patrono.

laries of Foundation, committed it to. Of these Dispositions there was great Variety: Sometimes the Founder of a Chapel gave an Estate or a certain Sum of Money to a neighbouring Monastery, on Condition that they found a Priest to officiate in it, and supported the Fabrick; as appears from two Cases in the Year-Books: One, where J. S.* the Founder brought his Action against the Abbot of *Newark* in *Surry*, for not maintaining the Chapel of — according to his Contract, and for which he had receiv'd a Sum of Money. The other, where one *Peter de Mara* †, a Foreigner, brought the like Action against the same Abbot, for not maintaining a Chapel founded and committed to that Abbey, by *H. de Mora* his Ancestor. Sometimes the Founder of a Chapel contracted with the Parish-Priest to supply it, by himself or his Curate; but in this Case, I think, it was always *annex'd* to his Living, and made a part of his Cure. But whether it was *annex'd*, or not, it is evident, that whatever Right or Power he had in, or over it, was, in this Case, derived to him from his Composition with the Founder; who, without Question, might part with his own Right,

* An. 10. H. 7. *Ter. Hil.*

† An. 16. H. 7. *Ter. Mis.*

and devolve it on another, and give the Rector, or any one else, the Power * of Patron or Visitor, &c. in a Benefice intirely of his own Erektion, provided the Bishop consented.

BUT generally this Right of Presentation or Nomination of the Clerk, was reserv'd by the Founders, to themselves, while they lived; and to their Heirs and Successors in their Estates after them. And thence it was, that in both the Acts †, made for the Suppression of Chapels, &c. and in the Provisions against all Claims or pretended Claims to any Right or Property in them, there are several express Clauses, to guard against all *Founders* or *Donors*, their *Heirs* or *Successors*. Now, the Lands of Endowment being long before alienated and pass'd away from these *Founders*, *their Heirs*, &c. All the Right that could remain in them at that Time, was the Patronage or Nomination; and consequently this was what these Clauses must intend to bar. But not the least Notice is taken, in either of these Acts, of the Parish Priests, or of any Rights they had in these Chapels;

Patronus in Fundatione vel Dotatione Beneficii potest apponere Pacta quacunq; vult. Pan. The. v. Patronus.

nor is any Provision made against their Claim; for which no better Reason can be given, than that they had none, and pretended to none.

BUT we need not look back into Antiquity, for Proofs that Chapels or Oratories independent, in the Instances aforesaid, on the Parochial Churches within whose Precincts they stand, are agreeable to our Constitution; when we can appeal to present Fact *, and produce a great Number of such Chapels, now subsisting among us, as a standing part of our Constitution.

THE Act which gave all *Free Chapels, Chantries, &c.* to H. 8. was either so negligently or so tenderly executed, that a great many escaped; so many, as to tempt a second Seizure under E. 6. In this last Act, some favourable † Clauses were ad-

* *Qua patent de facto & de notorietate Facti permanentis, circa ea non oportet Jura allegari. Lyndw. lib.3. tit.2. c. ut Clericalis. v. Beneficiati.*

† 1. When by the Institution they were required to keep and maintain a Preacher or a Grammar-School.

2. When the Parish was so large, as to require more Priests than one.

3. When a Chapel was made and ordained for the Ease of People, dwelling distant from the Parish Church. Towards all these, it is enacted—That this Act shall not in any Wise extend.

ded, under the Protection of which, several preserv'd themselves, and remain to this Day, commonly distinguish'd from Chapels of Ease, (which were annex'd to some Parochial Church) by the Name of Donatives † or Donative Chapels, or simply

† Several of these are *Presentative*: For the Act of E. 6. extending not only to Free Chapels, strictly so call'd, but to Chapels indefinitely, and even to all stipendiary Priests, having a perpetual Salary, included all Chapels or Oratories endow'd. Now all such Erections in which a perpetual Curate was placed, were, by the Canonical Rules, *presentable*——— *Si in Oratoriis est certus Minister, semper est presentandus Episcopo. Panorm. Conf. 54. P. 1.* Those erected by the King, or under his License, were privileged from the Power of the Ordinary; but those erected by the Ordinarie's License were doubtless subject to him. Of both kinds some escaped the Suppression, as they happen'd to be within the Exceptions of the Act. The former, I presume, may be those which continue Donative, the latter presentative. There has not I think been any Instance of a Royal Visitation of these exempt Chapels, since the Suppression of the rest; so that, in their present State they are in Effect under no Government; the Inconveniencies of which are obvious; and therefore it might become publick Wisdom to consider, whether they ought not, all, to be submitted to the Ordinary.

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Chapels, of such, or such an Hamlet. Of these we have a great Number, and several must be within every one's own Knowledge. They generally stand in some Hamlet, remote from the Parish Church, and were doubtless preserv'd by those Clauses in 1. *Ed. 6.* That Act *not extending to them*, they are left in the State they were in before,—supported by their own Endowments, presented or nominated to, by the Heirs of the Founders, their Devisees or Successors in their Estates; for the Convenience of whom, or their Tenants, they were at first erected. At the same Time all Offerings of such Tenants, or adjoining Inhabitants, all Tithes of the Lands, &c. are paid to the Ministers of the Parochial Churches.

THESE Oratories, Chapels, or Donatives, call them what you will, I insist on as a clear and present Evidence, that Places of Publick Worship independent on Parochial Churches, in all the Instances I contend for, are no Strangers to our Constitution, but acknowledg'd in immemorial Usage as agreeable to it: Neither did I ever hear, that any Rector or Vicar in whose Parish they stand, complain'd of them as injurious to his Rights; reviled the Persons officiating in them as *Thieves*, *Pickpockets*, or *Robbers*, or pretended any Title to or Interest in them.

By Law these Chapels stand : And is there any Law prohibiting the Building any more, with the same Independence on the Parochial Minister ? Or has the Church of *St. Andrew's* any peculiar Privileges restraining the Bishop from licensing such Erections within its Precinct ? Or has the Rector of it any distinct Rights from other Rectors ? Every Parish Priest, within whose Parish one of these ancient Chapels stands, may with just the same Right call it his Chapel, as the Rector of *St. Andrew's* claims this now building.

BEFORE the Reformation these Chapels abounded, and by the Limitations of the 1. E. 6. all were directed to be left standing, which were convenient for publick Worship ; which being then look'd on as sufficiently provided for, there appear'd little farther Occasion for such Erections ; and therefore we have but few Instances of them after that Time : Which I presume may be the Reason, that their Case has not been much under the Consideration of our practising Lawyers. But, unless there be any Prohibition ; by the same Law upon which these stand, more may be erected, if the Bishop shall see convenient. And since the Largeness of the Parish, and the Remoteness of the Church were, at the Time of the Suppression, thought good Reasons for leaving

ing these standing; the same Considerations are doubtless good Reasons for the Erection of *more*.

ALL Rights belonging to our Bishops before the Reformation, unless restrain'd or taken away by some Law, remain with them still: And it may be presum'd, their Lordships will not give them up to the Parish-Priests. To the Dioceans a Right of Licensing such Chapels, or Oratories, as I am contending for, in former Times, indisputably belong'd. The Authorities which have been produced, are incontestable Proofs of it; nor is there so much as the Colour of any Law to be offer'd, which hath since made a Change in the Legal State of this Question: If any *Statute* is pretended; let it be quoted; if *common Law* is said to be against us; let it be remember'd, that, before the Reformation, the *common Usage* was *with* us, and therefore *common Law* could not be *then against* us; and ever *since*, the Case hath been in a manner dormant; at least there hath been no new Rule of Procedure given us upon any Controversy which may happen to arise in this matter; so that there can be no Plea of *Custom* started, to overbear the Weight of those *Canonical* Directions, which have here been pointed to the Reader's Observation: And since the late Increase
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of Inhabitants in many Parishes, and the Defect of other Provisions have revived the *Use*, and, in some measure, the *necessity*, of these supplemental Helps; 'tis hoped their Lordships will exert their proper Power in the Encouragement of those who are inclin'd to furnish them.

SOME Erections of this kind have been made of late Years; and, of these, some may have been submitted to the Parochial Church, within whose Precincts they stand: And so also were many of those built in antient Times. But it will no more follow from these late Instances, that none can be built or licensed by the Bishop, without such Submission *now*, than it does, from those antient Instances, that none were built or licensed without such Submission *then*. There is no Doubt, but any Man may submit his Property to the Rector of the Parish, in whole, or in part, or under what Limitations he sees fit: But the Question is, whether the Law in this Case obliges him to do it, or whether the Bishop may not License without it.

LATE Examples also are not wanting of Chapels or Oratories built and licensed, without any such Dependence on Parochial Churches, as the Rector of St. Andrew's contends for. I will mention one only; and that the Act of a Person of indisputable Authority, a great and excellent

cellent Prelate of our Church, whose accurate Knowledge of our Constitution none will question, viz. the Right Reverend the Lord Bishop of *Bath and Wells*; who, I am well inform'd, has very lately licensed, as an *Oratory*, a publick Chapel built and endow'd by the late Lord *Weymouth*, without Dependence on, or Submission of the Patronage to, the Parish Church of *Frome*, within an Hamlet of which it stands. So great a Precedent will I doubt not, be allow'd its proper Weight in this Question.

What appears to have misled some Persons in the Consideration of this Case, is the Want of distinguishing between Chapels *annex'd*; and Oratories, or Chapels, *unannex'd*. For the *Annexion* of any Chapel to a Parochial Church, the Consent of the Incumbent is confessedly necessary; and when it is *annex'd*, it becomes Part and Member of his Church, and intirely subject to him. But Chapels *unannex'd* are also, as we have seen, an *antient* and *present* Part of our Constitution; and, with respect to these, there is not, so far as I can find by the best Search I have been able to make, the least Shadow of any Law or Canon which renders the Consent of the Parish-Priest necessary to the Erection of them, or gives the Patronage or Nomination to him, unless it was specially assigned to him by the

the Founders. All the Interest he can have in any such Erection, he must acquire by Contract with the Builders or Proprietors; and if, without any such Contract or any Donation made to him, he shall pretend either to enter himself, or put another by Title from him, in Possession of it, it is a manifest Violence and Invasion of their Property: And if any Rector or Vicar could be so absurd as to attempt such a thing, I should suspect him a little disorderd in his Head, like those crazed Persons who own all the World, and ask every one they meet for Rent.

IF this Chapel in St. *Andrew's* becomes upon its Erection *ipso facto* a Chapel of Ease, *annex'd* to that Church, and the Rector claims it under that Title, it concerns him to remember, that he will be obliged to supply it, as Rector of that Church, without any other Consideration than his present Parochial Revenues. For every Rector or Vicar is bound *ex officio* to supply every Chapel *annex'd* to his Church; but if he expects any farther Reward for serving it, 'tis evident, his Title to it must arise from a Contract and Stipulation with the Proprietors.

BUT let us suppose for the present, that our Constitution owns no Chapel of any other Denomination, than a Chapel of Ease *annex'd* to a Parochial Church; yet till any such Erection is actually so an-

nex'd, it cannot be claim'd under that Title; and to such *Annexion* no Authority can oblige the Proprietors without their own Consent; and if before such Consent be given, and such Act passed, the Rector shall nominate, and the Bishop license to it, as a *Chapel annex'd*, 'tis evident the Nomination and License are to a *Non-Entity*, a thing not in being, and which in the present Case never will be. But if it be nominated, or licens'd to, not as a *Chapel annex'd*, but as an *Oratory*; By what Right can the Rector nominate to it, or how can his Nomination be admitted by the Bishop? I humbly conceive that, in such a Case, both the Nomination and License would be absolute Nullities; that the Person so nominated would, in the proper Sense of the Word, be an *Intruder**, and such as the Bishop has no Authority to admit. The Bishop may prohibit the Erection of such Chapel or Oratory, or refuse his License to a Person offer'd to him for Preacher in it: But he can no more admit a Nomination, or License to it without the Consent of the Proprietors, than he could compel any Man or Number of Men to build one.

* *Intrusus*—*Qui in Beneficium Ecclesiasticum, absque præsentatione Patroni seipsum intrudit.*

Lynd. lib. 5. tit. 15. c. Adhæc. v. Intrusus.

It has been offer'd, I hear, as an Argument of the Rector of *St. Andrew's* Right in the present Case, that his Institution is to the Cure of the whole Parish, exclusive of all other Persons. But were not the Parish - Priests in former Times, when such Chapels or Oratories were frequent, and are not all other Rectors or Vicars, in whose Parishes any of those now remaining stand, instituted in as full Terms as He is? How comes *his* Institution, then, to convey more Right to *him*, than *theirs* either did, or doth, to *them*? In the very Form of Institution there is a Reserve made for all *Episcopal Rights*; the licensing Chapels or Oratories, and Persons to officiate in them, is a Right which belong'd to the Bishops in all former Ages, was never forfeited nor taken away, and is therefore remaining with them still, and consequently must be comprehended in that Reserve.

If it be said, that such Chapels or Oratories, as this in *St. Andrew's*, are of a different Constitution from those which remain to us since the Suppression of *E. 6*, and therefore my Conclusions will not hold from the one to the other. I answer,

1. They differ much more from *Chapels of Ease annex'd*; and therefore all Arguments for the Rector's claim to them under that Title, will be much less conclusive. But,

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2. In what is it, that they differ from those other Chapels? They are design'd to the same End, for Places of publick Worship, but with this Advantage; that, whereas *Those* removed only some inconvenience arising from the Distance of Men's Habitation from the Parish-Church, *These* supply an apparent, confess'd, Impossibility of coming to it, and may therefore hope for more Encouragement from the Bishops and all good Christians, than was given to *them*. *These* are erected and supported without Burden or Diminution to the Rectors, as *those* were, and are. The chief Difference between them is in the Methods by which it is propos'd to *support* them; but unless it can be proved, that this Difference gives the Rector the Power he claims over them, it cannot affect my Argument, or do him any Service.

I might produce all *Chapels* or *Oratories* of Hospitals, or of Noblemen, which are of publick Recourse, (and many such there are) as Places of publick Worship now subsisting, without any such Dependence on the Rectors or Vicars, in whose Parishes they stand, as is claim'd by the Rector of St. *Andrew's*; and my Argument would be good even from *them*. For tho' it may be objected, that *these* are of a more private Design than that which I contend for, yet this Circumstance will give the Rector little Advantage.

tage. For 'tis evident, that by these Chapels of Hospitals, &c. many Persons, Inhabitants of the Rector's or Vicar's Parish, (and therefore a part of his Care) are provided with Places of publick Worship, over which he has no Authority, nor any Pretence to nominate to the Supply of them. And if our Laws allow such independent Provision to be made for 40 or 50 Persons of his Flock, unless some Law specially restrains the Number, it may as well be extended to 500. But the former Instances are I think so clear a Proof of my Point, that no other need be added in Supplement to them.

I readily acknowledge, that the Parochial Constitution is preferable to all other Provisions; and that when the Inhabitants of a Parish are increased beyond the Capacity of one Church, and beyond such a Proportion as can be duly attended to by one Man's Care and Inspection, the most apposite and regular Supply is a Subdivision of such Parish into so many more, as may leave the Inhabitants of each provided with those spiritual Advantages, which were intended to the People in the first Designation of Parishes. And blessed be God, who put it into the Heart of our late QUEEN and her Great Council, to undertake this excellent Work. The Impediments, which at present retard the full Execution of it, I doubt not, the
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Piety and Wisdom of our Governours will in due Time remove. But in the Interim, if any other Provisions agreeable to Ecclesiastical Usage and the Laws of our Constitution, shall be offer'd in Aid to this, and in Supply of our present Exigence, they will surely be worth our Acceptance.

THAT Chapels or Oratories *unannex'd* to any Parochial Church, are a very antient Provision for publick Worship, and well known and allowed in our particular Constitution; that the Episcopal Authority was sufficient to the Erection of them; that the Patronage or Nomination to them belong'd *de Jure communi* to the Founders or Builders of them; and that the Parish-Priest had no Claim to it, unless from their Concession, I have endeavour'd to shew. And I doubt not, but our excellent Prelates will assert their just and proper Authority in the Encouragement of them, and not suffer it to be extorted from them, or the Exercise of it over-ruled and restrain'd, by new Pretensions of a Parochial Curate, unheard of by all Antiquity, and unsupported by any Canon of the Church, or Law of the Land.

F I N I S.